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**DISTRIBUTION OF POWERS BETWEEN FEDERAL
GOVERNMENT AND LOCAL GOVERNMENTS: A CRITICAL
ANALYSIS OF THE IRAQI CONSTITUTION 2005**



ESRAA MAHMOOD BADR ALSAMEE

**DOCTOR OF PHILOSOPHY
UNIVERSITI UTARA MALAYSIA
2018**

**DISTRIBUTION OF POWERS BETWEEN FEDERAL
GOVERNMENT AND LOCAL GOVERNMENTS: A CRITICAL
ANALYSIS OF THE IRAQI CONSTITUTION 2005**

ESRAA MAHMOOD BADR ALSAMEE (95315)



**A Thesis Submitted to the Ghazali Shafie Graduate School of Government
In fulfillment of the requirements for the Doctor of Philosophy
Universiti Utara Malaysia**



Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
(College of Law, Government and International Studies)
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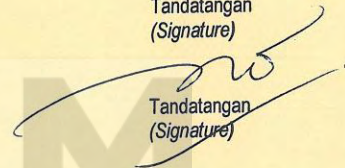
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ABSTRAK

Pembahagian kuasa kerajaan seperti yang termaktub di dalam perlembagaan persekutuan adalah isu paling penting yang dihadapi oleh sesebuah negara persekutuan pada saat permulaannya. Selepas kejatuhan rejim Saddam Hussein pada tahun 2003, federalisme telah diterima pakai oleh Iraq di bawah Perlembagaan 2005 yang kemudiannya telah mengubah negara tersebut dari negara kesatuan ke sebuah negara persekutuan. Walau bagaimanapun, isu pembahagian kuasa antara kerajaan persekutuan, kerajaan wilayah/tempatan, dan *governorates* sebagaimana yang ditetapkan oleh Perlembagaan 2005 adalah bercanggah dengan konsep persekutuan dan desentralisasi pentadbiran yang biasa diamalkan di negara-negara persekutuan yang lain. Terdapat juga percanggahan antara peruntukan perlembagaan dan aturan pembahagian kuasa yang mana ianya telah memberi kesan kepada penggunaan kuasa tersebut serta menjejaskan kestabilan dan keselamatan negara. Salah satu persoalan kajian yang ditimbulkan adalah mengenai pembahagian kuasa antara kerajaan pusat dan kerajaan tempatan di bawah Perlembagaan 2005. Oleh itu, objektif kajian ini adalah untuk mengkaji sistem persekutuan dan aplikasinya di Iraq. Pada masa yang sama, ia mengkaji pembahagian kuasa antara kerajaan persekutuan dan tempatan seperti mana yang ditetapkan di dalam Perlembagaan Iraq 2005. Di samping itu, ia juga menganalisis sistem disentralisasi pentadbiran berdasarkan pembahagian kuasa yang diamalkan oleh *governorates*. Kajian ini juga menjelaskan aplikasi federalisme di wilayah Kurdistan dan akhir sekali, memberi cadangan bagi menambahbaik sistem persekutuan di Iraq. Metodologi yang diguna pakai di dalam kajian ini adalah penyelidikan doktrin undang-undang dan kaedah kualitatif. Di samping itu, beberapa siri temubual secara semi-struktur telah dijalankan, sama ada secara bersemuka atau melalui penggunaan e-mel. Berdasarkan hasil kajian, terdapat salah faham terhadap pengagihan kuasa perlembagaan di kalangan kerajaan persekutuan, kerajaan wilayah/tempatan dan *governorates*. Terdapat juga salah faham mengenai konsep desentralisasi pentadbiran dan federalisme. Di samping itu, sistem persekutuan di Iraq tidak selaras dengan negara-negara lain yang mengikuti konsep federalisme dari segi teks dan pemakaiannya. Kajian ini mencadangkan agar beberapa peruntukan perlembagaan mengenai pengagihan kuasa dipinda atau dimansuhkan dengan apa-apa cara yang dipersetujui mengikut konsep and applikasi federalisme yang diterima pakai secara meluas di kalangan negara-negara persekutuan di seluruh dunia.

Kata Kunci: Sistem Federal, Pembahagian Kuasa, Kerajaan Persekutuan, Kerajaan Tempatan, Perlembagaan Iraq 2005.

ABSTRACT

The distribution of powers of government embodied in the Federal Constitution is the most important issue facing a federal state at its inception. Following the downfall of Saddam Hussein and his regime in 2003, Iraq has adopted federalism under the Constitution of 2005, which subsequently transformed the country from a unitary state to a federal state. Nonetheless, the issue of power distribution between the federal government, regional governments, and the governorates as prescribed in the Constitution is contradicting with the concepts of federalism and administrative decentralization which are normally practiced in other federal states. There is also a disparity between the constitutional provisions and distributional arrangement of powers of which has affected the use of the powers, as well as undermined the stability and security of the country. One of the questions of the study is about the division of powers between the central government and local governments under the Constitution of 2005. Therefore, the objective of this study is to examine the federal system and its application in Iraq. At the same time, it studies the distribution of powers between the federal and local governments in Iraqi Constitution of 2005. It also analyses the system of administrative decentralization in light of the division of powers practiced by the governorates. This study also examines the application of federalism in the Kurdistan region and lastly, to propose recommendations for the improvement of the federal system in Iraq. The methodologies adopted in this study are doctrinal legal research and qualitative approach. In addition, a series of semi-structured interview were conducted, either face-to-face or through the use of email. Based on the findings of the study, there is a misconception towards the distribution of the constitutional powers among different levels of rulings represented by the federal government, regional governments and governorates. There is also a misconception on the concept of administrative decentralization and federalism. In addition, federalist system in Iraq is inconsistent with other countries that follow the concept of federalism in terms of text and its application. This study recommends that some of the constitutional provisions regarding the distribution of powers are to be amended or repealed in any agreeable ways according to the widely adopted concept of federalism and its applications among the federal states around the world.

Keywords: Federal System, Distribution Of Powers, Federal Government, Local Government, Iraqi Constitution of 2005.

DEDICATIONS

I dedicate this thesis to my father and my mother who devoted themselves to raising me and encouraging me to further my education.



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LIST OF ABBREVIATIONS

CDC	Constitution Drafting Committee
CPA	Coalition Provisional Authority
IGC	Iraqi Governing Council
IKP	Iraqi Kurdistan Parliament
KDP	Kurdistan Democratic Party
KNA	Kurdistan National Assembly
KRG	Kurdistan Regional Government
PUK	Patriotic Union of Kurdistan party
RCC	Revolutionary Command Council
TAL	Transitional Administrative Law
TNA	Transitional National Assembly
UK	United Kingdom
UN	United Nations
UNSC	United Nations Security Council
US	United States

LIST OF STATUTES

Administration for the State of Iraq for the Transitional Period 2004.
American Constitution of 1789.
Coalition Provisional Authority Order No. 71 of 2004.
Federal Supreme Court Decision No. 16 of 2008.
Federal Supreme Court Decision No. 9 of 2007.
Iraqi Constitution 1970.
Iraqi Constitution of 2005.
Judicial Authority of Kurdistan Law No. 23 of 2007.
Judiciary Law of Kurdistan No. 14 of 1992.
Kurdistan National Assembly Law No. 1 of 1992.
Kurdistan Region Law No. 3 of 2009.
Kurdistan Region Presidency Law 1 of 2005.
Law Autonomy of Kurdistan No. 33 of 1974.
Law of Council of Ministers of the Kurdistan Region No. 3 in 1992.
Law of Governorates No. 159 of 1969.
Law of Governorates That are Not Organized in a Region No. 21 of 2008.
Law of Kurdistan Region's Governorates No.3 of 2009.
Law of Salaries and Allowances of Presidency of the Republic No. 26 of 2011.
Law of the Federal Supreme Court No. 30 of 2005.
Law of Vice-President of the Republic No. 1 of 2011.
Malaysian Constitution of 1957.
Rules of Procedure of the Judicial Council of Kurdistan Region No. 1 of 2008.
Switzerland Constitution of 1999.
United Nation Security Council Resolution No. 688 of 1991.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Federalism first emerged in the fifth century¹ in ancient Greek cities at the time when a great deal of social and cultural development was enjoyed. In addition, there was the emergence of various unions such as the empire of Charlemagne in the ninth century, Switzerland Federalism at the end of the twelfth century, and federalism of the low-land in the sixteenth century.²

The United States (US) has been considered as one of the oldest and most important federations in the world, having maintained federalism since 1789. Similarly, Switzerland Federation in 1848 and Canadian Federation in 1867 have been continuously maintained since their initial application. After World War II, Federal Unions appeared in West Germany in 1949, in India in 1950, in Malaysia in 1963, in Pakistan in 1971, and in the United Arab Emirates in 1971.³

¹ Ursula K. Hicks, *Federalism, Failure and Success, A Comparative Study* (London: The Macmillan Press Ltd, 1978), 15.

² Amjad Zine El Abidine Toama, "Future of Federal System in Iraq-Study International Experiences," *AL Mustansiriya of Arab and International Studies*, no. 47 (2014): 5.

³ Raad Kassem Saleh, "Power Systems in Federal Government and Democracy-Australia a Model," *AL Mustansiriya of Arab and International Studies*, no. 35 (2011): 42-43.

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APPENDIX 1

THE IRAQI CONSTITUTION OF 2005

The Preamble

In the name of God, the Most merciful, the Most compassionate

{We have honored the sons of Adam}

We, the people of Mesopotamia, the homeland of the apostles and prophets, resting place of the virtuous imams, cradle of civilization, crafters of writing, and home of numeration. Upon our land the first law made by man was passed, and the oldest pact of just governance was inscribed, and upon our soil the saints and companions of the Prophet prayed, philosophers and scientists theorized, and writers and poets excelled; Acknowledging God's right over us, and in fulfillment of the call of our homeland and citizens, and in a response to the call of our religious and national leaderships and the determination of our great authorities and of our leaders and politicians, and in the midst of international support from our friends and those who love us, marched for the first time in our history towards the ballot boxes by the millions, men and women, young and old, on the thirtieth of January 2005, invoking the pains of sectarian oppression inflicted by the autocratic clique and inspired by the tragedies of Iraq's martyrs, Shiite and Sunni, Arabs and Kurds and Turkmen and from all other components of the people, and recollecting the darkness of the ravage of the holy cities and the South in the Sha'abaniyya uprising and burnt by the flames of grief of the mass graves, the marshes, Al-Dujail and others and articulating the sufferings of racial oppression in the massacres of Halabcha, Barzan, Anfal and the Fayli Kurds and inspired by the ordeals of the Turkmen in Bashir and the sufferings of the people of the western region, as is the case in the remaining areas of Iraq where the people suffered from the liquidation of their leaders, symbols, and Sheiks and from the displacement of their skilled individuals and from drying out of its cultural and intellectual wells, so we sought hand in hand and shoulder to shoulder to create our new Iraq, the Iraq of the future, free from sectarianism, racism, complex of regional attachment, discrimination, and exclusion. Accusations of being infidels, and terrorism did not stop us from marching forward to build a nation of law. Sectarianism and racism have not stopped us from marching together to strengthen our national unity, following the path of peaceful transfer of power, adopting the course of just distribution of resources, and providing equal opportunity for all. We, the people of Iraq, who have just risen from our stumble, and who are looking with confidence to the future through a republican, federal, democratic, pluralistic system, have resolved with the determination of our men, women, elderly, and youth to respect the rule of law, to establish justice and equality, to cast aside the politics of aggression, to pay attention to women and their rights, the elderly and their concerns, and children and their affairs, to spread the culture of diversity, and to defuse terrorism. We, the people of Iraq, of all components and across the spectrum, have taken upon ourselves to decide freely and by choice to unite our future, to take lessons from yesterday for tomorrow, and to enact this permanent Constitution, through the values and ideals of the heavenly messages and the findings of science and man's civilization. The adherence to this Constitution preserves for Iraq its free union of people, of land, and of sovereignty.

Section One

Fundamental Principles

Article 1:

The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq.

Article 2:

First: Islam is the official religion of the State and is a foundation source of legislation:

- A. No law may be enacted that contradicts the established provisions of Islam
- B. No law may be enacted that contradicts the principles of democracy.
- C. No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution.

Second: This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandaean Sabians.

Article 3:

Iraq is a country of multiple nationalities, religions, and sects. It is a founding and active member in the Arab League and is committed to its charter, and it is part of the Islamic world.

Article 4:

First: The Arabic language and the Kurdish language are the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turkmen, Syriac, and Armenian shall be guaranteed in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions.

Second: The scope of the term “official language” and the means of applying the provisions of this article shall be defined by a law and shall include:

- A. Publication of the Official Gazette, in the two languages;
- B. Speech, conversation, and expression in official domains, such as the Council of Representatives, the Council of Ministers, courts, and official conferences, in either of the two languages;
- C. Recognition and publication of official documents and correspondence in the two languages;
- D. Opening schools that teach the two languages, in accordance with the educational guidelines;
- E. Use of both languages in any matter enjoined by the principle of equality such as bank notes, passports, and stamps.

Third: The federal and official institutions and agencies in the Kurdistan region shall use both languages.

Fourth: The Turkomen language and the Syriac language are two other official languages in the administrative units in which they constitute density of population.

Fifth: Each region or governorate may adopt any other local language as an additional official language if the majority of its population so decides in a general referendum.

Article 5:

The law is sovereign. The people are the source of authority and legitimacy, which they shall exercise in a direct, general, secret ballot and through their constitutional institutions.

Article 6:

Transfer of authority shall be made peacefully through democratic means as stipulated in this Constitution.

Article 7:

First: Any entity or program that adopts, incites, facilitates, glorifies, promotes, or justifies racism or terrorism or accusations of being an infidel (takfir) or ethnic cleansing, especially the Saddamist Ba'ath in Iraq and its symbols, under any name whatsoever, shall be prohibited. Such entities may not be part of political pluralism in Iraq. This shall be regulated by law.

Second: The State shall undertake to combat terrorism in all its forms, and shall work to protect its territories from being a base, pathway, or field for terrorist activities.

Article 8:

Iraq shall observe the principles of good neighborliness, adhere to the principle of non-interference in the internal affairs of other states, seek to settle disputes by peaceful means, establish relations on the basis of mutual interests and reciprocity, and respect its international obligations.

Article 9:

First:

A. The Iraqi armed forces and security services will be composed of the components of the Iraqi people with due consideration given to their balance and representation without discrimination or exclusion. They shall be subject to the control of the civilian authority, shall defend Iraq, shall not be used as an instrument to oppress the Iraqi people, shall not interfere in the political affairs, and shall have no role in the transfer of authority.

B. The formation of military militias outside the framework of the armed forces is prohibited.

C. The Iraqi armed forces and their personnel, including military personnel working in the Ministry of Defense or any subordinate departments or organizations, may not stand for election to political office, campaign for candidates, or participate in other activities prohibited by Ministry of Defense regulations. This ban includes the activities of the personnel mentioned above acting in their personal or professional capacities, but shall not infringe upon the right of these personnel to cast their vote in the elections.

D. The Iraqi National Intelligence Service shall collect information, assess threats to national security, and advise the Iraqi government. This Service shall be under civilian control, shall be subject to legislative oversight, and shall operate in accordance with the law and pursuant to the recognized principles of human rights.

E. The Iraqi Government shall respect and implement Iraq's international obligations regarding the non-proliferation, non-development, non-production, and non-use of nuclear,

chemical, and biological weapons, and shall prohibit associated equipment, materiel, technologies, and delivery systems for use in the development, manufacture, production, and use of such weapons.

Second: Military service shall be regulated by law.

Article 10:

The holy shrines and religious sites in Iraq are religious and civilizational entities. The State is committed to assuring and maintaining their sanctity, and to guaranteeing the free practice of rituals in them.

Article 11:

Baghdad is the capital of the Republic of Iraq.

Article 12:

First: The flag, national anthem, and emblem of Iraq shall be regulated by law in a way that symbolizes the components of the Iraqi people.

Second: A law shall regulate honors, official holidays, religious and national occasions and the Hijri and Gregorian calendar.

Article 13:

First: This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception.

Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.

Section Two

Rights and Freedoms

Chapter One Rights

ONE: Civil and Political Rights

Article 14:

Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.

Article 15:

Every individual has the right to enjoy life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority.

Article 16:

Equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken.

Article 17:

First: Every individual shall have the right to personal privacy so long as it does not contradict the rights of others and public morals.

Second: The sanctity of the homes shall be protected. Homes may not be entered, searched, or violated, except by a judicial decision in accordance with the law.

Article 18:

First: Iraqi citizenship is a right for every Iraqi and is the basis of his nationality.

Second: Anyone who is born to an Iraqi father or to an Iraqi mother shall be considered an Iraqi. This shall be regulated by law.

Third:

A. An Iraqi citizen by birth may not have his citizenship withdrawn for any reason. Any person who had his citizenship withdrawn shall have the right to demand its reinstatement. This shall be regulated by a law.

B. Iraqi citizenship shall be withdrawn from naturalized citizens in cases regulated by law.

Fourth: An Iraqi may have multiple citizenships. Everyone who assumes a senior, security or sovereign position must abandon any other acquired citizenship. This shall be regulated by law.

Fifth: Iraqi citizenship shall not be granted for the purposes of the policy of population settlement that disrupts the demographic composition of Iraq.

Sixth: Citizenship provisions shall be regulated by law. The competent courts shall consider the suits arising from those provisions.

Article 19

First: The judiciary is independent and no power is above the judiciary except the law.

Second: There is no crime or punishment except by law. The punishment shall only be for an act that the law considers a crime when perpetrated. A harsher punishment than the applicable punishment at the time of the offense may not be imposed.

Third: Litigation shall be a protected and guaranteed right for all.

Fourth: The right to a defense shall be sacred and guaranteed in all phases of investigation and the trial.

Fifth: The accused is innocent until proven guilty in a fair legal trial. The accused may not be tried for the same crime for a second time after acquittal unless new evidence is produced.

Sixth: Every person shall have the right to be treated with justice in judicial and administrative proceedings.

Seventh: The proceedings of a trial are public unless the court decides to make it secret.

Eighth: Punishment shall be personal.

Ninth: Laws shall not have retroactive effect unless stipulated otherwise. This exclusion shall not include laws on taxes and fees.

Tenth: Criminal laws shall not have retroactive effect, unless it is to the benefit of the accused.

Eleventh: The court shall appoint a lawyer at the expense of the state for an accused of a felony or misdemeanor who does not have a defense lawyer.

Twelfth:

A. Unlawful detention shall be prohibited.

B. Imprisonment or detention shall be prohibited in places not designed for these purposes, pursuant to prison laws covering health and social care, and subject to the authorities of the State.

Thirteenth: The preliminary investigative documents shall be submitted to the competent judge in a period not to exceed twenty-four hours from the time of the arrest of the accused, which may be extended only once and for the same period.

Article 20

Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office.

Article 21

First: No Iraqi shall be surrendered to foreign entities and authorities.

Second: A law shall regulate the right of political asylum in Iraq. No political refugee shall be surrendered to a foreign entity or returned forcibly to the country from which he fled.

Third: Political asylum shall not be granted to a person accused of committing international or terrorist crimes or to any person who inflicted damage on Iraq.

TOW: Economic, Social and Cultural Freedoms

Universiti Utara Malaysia

Article 22:

First: Work is a right for all Iraqis in a way that guarantees a dignified life for them.

Second: The law shall regulate the relationship between employees and employers on economic bases and while observing the rules of social justice.

Third: The State shall guarantee the right to form and join unions and professional associations, and this shall be regulated by law.

Article 23:

First: Private property is protected. The owner shall have the right to benefit, exploit and dispose of private property within the limits of the law.

Second: Expropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law.

Third:

A. Every Iraqi shall have the right to own property anywhere in Iraq. No others may possess immovable assets, except as exempted by law.

B. Ownership of property for the purposes of demographic change is prohibited.

Article 24:

The State shall guarantee freedom of movement of Iraqi manpower, goods, and capital between regions and governorates, and this shall be regulated by law.

Article 25:

The State shall guarantee the reform of the Iraqi economy in accordance with modern economic principles to insure the full investment of its resources, diversification of its sources, and the encouragement and development of the private sector.

Article 26:

The State shall guarantee the encouragement of investment in the various sectors, and this shall be regulated by law.

Article 27:

First: Public assets are sacrosanct, and their protection is the duty of each citizen.

Second: The provisions related to the preservation of State properties, their management, the conditions for their disposal, and the limits for these assets not to be relinquished shall all be regulated by law.

Article 28:

First: No taxes or fees shall be levied, amended, collected, or exempted, except by law.

Second: Low income earners shall be exempted from taxes in a way that guarantees the preservation of the minimum income required for living. This shall be regulated by law.

Article 29:

First:

A. The family is the foundation of society; the State shall preserve it and its religious, moral, and national values.

B. The State shall guarantee the protection of motherhood, childhood and old age, shall care for children and youth, and shall provide them with the appropriate conditions to develop their talents and abilities.

Second: Children have the right to upbringing, care and education from their parents. Parents have the right to respect and care from their children, especially in times of need, disability, and old age.

Third: Economic exploitation of children in all of its forms shall be prohibited, and the State shall take the necessary measures for their protection.

Fourth: All forms of violence and abuse in the family, school, and society shall be prohibited.

Article 30:

First: The State shall guarantee to the individual and the family - especially children and women – social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing.

Second: The State shall guarantee social and health security to Iraqis in cases of old age, sickness, employment disability, homelessness, orphanhood, or unemployment, shall work to

protect them from ignorance, fear and poverty, and shall provide them housing and special programs of care and rehabilitation, and this shall be regulated by law.

Article 31:

First: Every citizen has the right to health care. The State shall maintain public health and provide the means of prevention and treatment by building different types of hospitals and health institutions.

Second: Individuals and entities have the right to build hospitals, clinics, or private health care centers under the supervision of the State, and this shall be regulated by law.

Article 32:

The State shall care for the handicapped and those with special needs, and shall ensure their rehabilitation in order to reintegrate them into society, and this shall be regulated by law.

Article 33:

First: Every individual has the right to live in safe environmental conditions.

Second: The State shall undertake the protection and preservation of the environment and its biological diversity.

Article 34:

First: Education is a fundamental factor for the progress of society and is a right guaranteed by the state. Primary education is mandatory and the state guarantees that it shall combat illiteracy.

Second: Free education in all its stages is a right for all Iraqis.

Third: The State shall encourage scientific research for peaceful purposes that serve humanity and shall support excellence, creativity, invention, and different aspects of ingenuity.

Fourth: Private and public education shall be guaranteed, and this shall be regulated by law.

Article 35:

The state shall promote cultural activities and institutions in a manner that befits the civilizational and cultural history of Iraq, and it shall seek to support indigenous Iraqi cultural orientations.

Article 36:

Practicing sports is a right of every Iraqi and the state shall encourage and care for such activities and shall provide for their requirements.

Chapter Two

Freedoms

Article 37:

First:

- A. The liberty and dignity of man shall be protected.
- B. No person may be kept in custody or investigated except according to a judicial decision.
- C. All forms of psychological and physical torture and inhumane treatment are prohibited. Any confession made under force, threat, or torture shall not be relied on, and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the law.

Second: The State shall guarantee protection of the individual from intellectual, political and religious coercion.

Third: Forced labor, slavery, slave trade, trafficking in women or children, and sex trade shall be prohibited.

Article 38:

The State shall guarantee in a way that does not violate public order and morality:

First: Freedom of expression using all means.

Second: Freedom of press, printing, advertisement, media and publication.

Third: Freedom of assembly and peaceful demonstration, and this shall be regulated by law.

Article 39:

First: The freedom to form and join associations and political parties shall be guaranteed, and this shall be regulated by law.

Second: It is not permissible to force any person to join any party, society, or political entity, or force him to continue his membership in it.

Article 40:

The freedom of communication and correspondence, postal, telegraphic, electronic, and telephonic, shall be guaranteed and may not be monitored, wiretapped, or disclosed except for legal and security necessity and by a judicial decision.

Article 41:

Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.

Article 42:

Each individual shall have the freedom of thought, conscience, and belief.

Article 43:

First: The followers of all religions and sects are free in the:

- A. Practice of religious rites, including the Hussein rituals.
- B. Management of religious endowments (waqf), their affairs, and their religious institutions, and this shall be regulated by law.

Second: The State shall guarantee freedom of worship and the protection of places of worship.

Article 44:

First: Each Iraqi has freedom of movement, travel, and residence inside and outside Iraq.

Second: No Iraqi may be exiled, displaced, or deprived from returning to the homeland.

Article 45:

First: The State shall seek to strengthen the role of civil society institutions, and to support, develop and preserve their independence in a way that is consistent with peaceful means to achieve their legitimate goals, and this shall be regulated by law.

Second: The State shall seek the advancement of the Iraqi clans and tribes, shall attend to their affairs in a manner that is consistent with religion and the law, and shall uphold their noble human values in a way that contributes to the development of society. The State shall prohibit the tribal traditions that are in contradiction with human rights.

Article 46:

Restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom.

Section Three
Federal Powers

Article 47:

The federal powers shall consist of the legislative, executive, and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers.

Chapter one
The Legislative Power

Article 48:

The federal legislative power shall consist of the Council of Representatives and the Federation Council.

One: The Council of Representatives

Article 49:

First: The Council of Representatives shall consist of a number of members, at a ratio of one seat per 100,000 Iraqi persons representing the entire Iraqi people. They shall be elected through a direct secret general ballot. The representation of all components of the people shall be upheld in it.

Second: A candidate to the Council of Representatives must be a fully qualified Iraqi.

Third: A law shall regulate the requirements for the candidate, the voter, and all that is related to the elections.

Fourth: The elections law shall aim to achieve a percentage of representation for women of not less than one-quarter of the members of the Council of Representatives.

Fifth: The Council of Representatives shall promulgate a law dealing with the replacement of its members on resignation, dismissal, or death.

Sixth: It is not permissible to combine membership in the Council of Representatives with any work or other official position.

Article 50:

Each member of the Council of Representatives shall take the following constitutional oath before the Council prior to assuming his duties:

“I swear by God Almighty to carry out my legal duties and responsibilities with devotion and integrity and preserve the independence and sovereignty of Iraq, and safeguard the interests of its people, and ensure the safety of its land, sky, water, wealth, and federal democratic system, and I shall endeavor to protect public and private liberties, the independence of the judiciary, and pledge to implement legislation faithfully and neutrally. God is my witness.”

Article 51:

The Council of Representatives shall establish its bylaws to regulate its work.

Article 52:

First: The Council of Representatives shall decide, by a two-thirds majority, the authenticity of membership of its member within thirty days from the date of filing an objection.

Second: The decision of the Council of Representatives may be appealed before the Federal Supreme Court within thirty days from the date of its issuance.

Article 53:

First: Sessions of the Council of Representatives shall be public unless, for reasons of necessity, the Council decides otherwise.

Second: Minutes of the sessions shall be published by means considered appropriate by the Council.

Article 54:

The President of the Republic shall call upon the Council of Representatives to convene by a presidential decree within fifteen days from the date of the ratification of the general election results. Its eldest member shall chair the first session to elect the speaker of the Council and his two deputies. This period may not be extended by more than the aforementioned period.

Article 55:

The Council of Representatives shall elect in its first session its speaker, then his first deputy and second deputy, by an absolute majority of the total number of the Council members by direct secret ballot.

Article 56:

First: The electoral term of the Council of Representatives shall be four calendar years, starting with its first session and ending with the conclusion of the fourth year.

Second: The new Council of Representatives shall be elected forty-five days before the conclusion of the preceding electoral term.

Article 57:

The Council of Representatives shall have one annual term, with two legislative sessions, lasting eight months. The bylaws shall define the method to convene the sessions. The session in which the general budget is being presented shall not end until approval of the budget.

Article 58:

First: The President of the Republic, the Prime Minister, the Speaker of the Council of Representatives, or fifty members of the Council of Representatives may call the Council to an extraordinary session. The session shall be restricted to the topics that necessitated the call for the session.

Second: The legislative session of the Council of Representatives may be extended for no more than 30 days to complete the tasks that require the extension, based on a request from the President of the Republic, the Prime Minister, the Speaker of the Council, or fifty members of the Council of Representatives.

Article 59:

First: The Council of Representatives quorum shall be achieved by an absolute majority of its members.

Second: Decisions in the sessions of the Council of Representatives shall be made by a simple majority after quorum is achieved, unless otherwise stipulated.

Article 60:

First: Draft laws shall be presented by the President of the Republic and the Council of Ministers.

Second: Proposed laws shall be presented by ten members of the Council of Representatives or by one of its specialized committees.

Article 61:

The Council of Representatives shall be competent in the following:

First: Enacting federal laws.

Second: Monitoring the performance of the executive authority.

Third: Electing the President of the Republic.

Fourth: Regulating the ratification process of international treaties and agreements by a law, to be enacted by a two-thirds majority of the members of the Council of Representatives.

Fifth: Approving the appointment of the following:

A. The President and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the President of Judicial Oversight Commission by an absolute majority, based on a proposal from the Higher Juridical Council.

B. Ambassadors and those with special grades, based on a proposal from the Council of Ministers.

C. The Iraqi Army Chief of Staff, his assistants, those of the rank of division commander and above, and the director of the intelligence service, based on a proposal from the Council of Ministers.

Sixth:

A. Questioning the President of the Republic, based on a petition with cause, by an absolute majority of the members of the Council of Representatives.

B. Relieving the President of the Republic by an absolute majority of the Council of Representatives after being convicted by the Federal Supreme Court in one of the following cases:

1-Perjury of the constitutional oath.

2-Violating the Constitution.

3-High treason.

Seventh:

A. A member of the Council of Representatives may direct questions to the Prime Minister and the Ministers on any subject within their specialty and each of them shall answer the members' questions. Only the member who has asked the question shall have the right to comment on the answer.

B. At least twenty-five members of the Council of Representatives may raise a general issue for discussion in order to inquire about a policy and the performance of the Council of Ministers or one of the Ministries and it shall be submitted to the Speaker of the Council of Representatives, and the Prime Minister or the Ministers shall specify a date to come before the Council of Representatives to discuss it.

C. A member of the Council of Representatives, with the agreement of twenty-five members, may direct an inquiry to the Prime Minister or the Ministers to call them to account on the issues within their authority. The debate shall not be held on the inquiry except after at least seven days from the date of submission of the inquiry.

Eighth:

A. The Council of Representatives may withdraw confidence from one of the Ministers by an absolute majority and he shall be considered resigned from the date of the decision of withdrawal of confidence. A vote of no confidence in a Minister may not be held except upon his request or on the basis of a request signed by fifty members after the Minister has appeared for questioning before the Council. The Council shall not issue its decision regarding the request except after at least seven days from the date of its submission.

B.1-The President of the Republic may submit a request to the Council of Representatives to withdraw confidence from the Prime Minister.

2-The Council of Representatives may withdraw confidence from the Prime Minister based on the request of one-fifth of its members. This request shall not be submitted except after an inquiry directed at the Prime Minister and after at least seven days from the date of submitting the request.

3- The Council of Representatives may decide to withdraw confidence from the Prime Minister by an absolute majority of the number of its members.

C. The Government is deemed resigned in case of withdrawal of confidence from the Prime Minister.

- D. In case of a vote of withdrawal of confidence in the Council of Ministers as a whole, the Prime Minister and the Ministers continue in their positions to run everyday business for a period not to exceed thirty days until a new Council of Ministers is formed in accordance with the provisions of Article 76 of this Constitution.
- E. The Council of Representatives may question independent commission heads in accordance with the same procedures related to the Ministers. The Council shall have the right to relieve them by absolute majority.

Ninth:

- A. To consent to the declaration of war and the state of emergency by a two-thirds majority based on a joint request from the President of the Republic and the Prime Minister.
- B. The state of emergency shall be declared for a period of thirty days, which can be extended after approval each time.
- C. The Prime Minister shall be delegated the necessary powers which enable him to manage the affairs of the country during the period of the declaration of war and the state of emergency. These powers shall be regulated by a law in a way that does not contradict the Constitution.
- D. The Prime Minister shall present to the Council of Representatives the measures taken and the results during the period of the declaration of war and the state of emergency within 15 days from the date of its end.

Article 62:

First: The Council of Ministers shall submit the draft general budget bill and the closing account to the Council of Representatives for approval.

Second: The Council of Representatives may conduct transfers between the sections and chapters of the general budget and reduce the total of its sums, and it may suggest to the Council of Ministers that they increase the total expenses, when necessary.

Article 63:

First: A law shall regulate the rights and privileges of the speaker of the Council of Representatives, his two deputies, and the members of the Council of Representatives.

Second:

- A. A member of the Council of Representatives shall enjoy immunity for statements made while the Council is in session, and the member may not be prosecuted before the courts for such.
- B. A Council of Representatives member may not be placed under arrest during the legislative term of the Council of Representatives, unless the member is accused of a felony and the Council of Representatives members consent by an absolute majority to lift his immunity or if he is caught in flagrante delicto in the commission of a felony.
- C. A Council of Representatives member may not be arrested after the legislative term of the Council of Representatives, unless the member is accused of a felony and with the consent of the speaker of the Council of Representatives to lift his immunity or if he is caught in flagrante delicto in the commission of a felony.

Article 64:

First: The Council of Representatives may be dissolved by an absolute majority of the number of its members, or upon the request of one-third of its members by the Prime Minister with the consent of the President of the Republic. The Council shall not be dissolved during the period in which the Prime Minister is being questioned.

Second: Upon the dissolution of the Council of Representatives, the President of the Republic shall call for general elections in the country within a period not to exceed sixty days from the date of its dissolution. The Council of Ministers in this case is deemed resigned and continues to run everyday business.

TWO: The Federation Council

Article 65:

A legislative council shall be established named the “Federation Council,” to include representatives from the regions and the governorates that are not organized in a region. A law, enacted by a two-thirds majority of the members of the Council of Representatives, shall regulate the formation of the Federation Council, its membership conditions, its competencies, and all that is connected with it.

Chapter Two

The Executive Power

Article 66:

The federal executive power shall consist of the President of the Republic and the Council of Ministers and shall exercise its powers in accordance with the Constitution and the law.

ONE: The President of the Republic

Article 67:

The President of the Republic is the Head of the State and a symbol of the unity of the country and represents the sovereignty of the country. He shall guarantee the commitment to the Constitution and the preservation of Iraq’s independence, sovereignty, unity, and the safety of its territories, in accordance with the provisions of the Constitution.

Article 68:

A nominee to the Presidency of the Republic must be:

First: An Iraqi by birth, born to Iraqi parents.

Second: Fully qualified and must be over forty years of age.

Third: Of good reputation and political experience, known for his integrity, uprightness, fairness, and loyalty to the homeland.

Fourth: Free of any conviction of a crime involving moral turpitude.

Article 69:

First: The provisions for nomination to the office of the President of the Republic shall be regulated by law.

Second: The provisions for nomination to the office of one or more Vice Presidents of the Republic shall be regulated by law.

Article 70:

First: The Council of Representatives shall elect a President of the Republic from among the candidates by a two-thirds majority of the number of its members.

Second: If none of the candidates receive the required majority vote then the two candidates who received the highest number of votes shall compete and the one who receives the majority of votes in the second election shall be declared President.

Article 71:

The President shall take the constitutional oath before the Council of Representatives according to the language stipulated in Article 50 of the Constitution.

Article 72:

First: The President of the Republic's term in office shall be limited to four years. He may be re-elected for a second time only.

Second:

A. The President of the Republic's term in office shall end with the end of the term of the Council of Representatives.

B. The President of the Republic shall continue to exercise his duties until after the end of the election and the meeting of the new Council of Representatives, provided that a new President of the Republic is elected within thirty days from the date of its first convening. C- In case the position of the President of the Republic becomes vacant for any reason, a new President shall be elected to complete the remaining period of the President's term.

Article 73:

The President of the Republic shall assume the following powers:

First: To issue a special pardon on the recommendation of the Prime Minister, except for anything concerning a private claim and for those who have been convicted of committing international crimes, terrorism, or financial and administrative corruption.

Second: To ratify international treaties and agreements after the approval by the Council of Representatives. Such international treaties and agreements are considered ratified after fifteen days from the date of receipt by the President.

Third: To ratify and issue the laws enacted by the Council of Representatives. Such laws are considered ratified after fifteen days from the date of receipt by the President.

Fourth: To call the elected Council of Representatives to convene during a period not to exceed fifteen days from the date of approval of the election results and in the other cases stipulated in the Constitution.

Fifth: To award medals and decorations on the recommendation of the Prime Minister in accordance with the law.

Sixth: To accredit ambassadors.

Seventh: To issue Presidential decrees.

Eighth: To ratify death sentences issued by the competent courts.

Ninth: To perform the duty of the High Command of the armed forces for ceremonial and honorary purposes.

Tenth: To exercise any other presidential powers stipulated in this Constitution.

Article 74:

A law shall fix the salary and the allowances of the President of the Republic.

Article 75:

First: The President of the Republic shall have the right to submit his resignation in writing to the Speaker of the Council of Representatives, and it shall be considered effective after seven days from the date of its submission to the Council of Representatives.

Second: The Vice President shall replace the President in case of his absence.

Third: The Vice President shall replace the President of the Republic in the event that the post of the President becomes vacant for any reason whatsoever. The Council of Representatives must elect a new President within a period not to exceed thirty days from the date of the vacancy.

Fourth: In case the post of the President of the Republic becomes vacant, the Speaker of the Council of Representatives shall replace the President of the Republic in case he does not have a Vice President, on the condition that a new President is elected during a period not to exceed thirty days from the date of the vacancy and in accordance with the provisions of this Constitution.

TWO: Council of Ministers

Article 76:

First: The President of the Republic shall charge the nominee of the largest Council of Representatives bloc with the formation of the Council of Ministers within fifteen days from the date of the election of the President of the Republic.

Second: The Prime Minister-designate shall undertake the naming of the members of his Council of Ministers within a period not to exceed thirty days from the date of his designation.

Third: If the Prime Minister-designate fails to form the Council of Ministers during the period specified in clause "Second," the President of the Republic shall charge a new nominee for the post of Prime Minister within fifteen days.

Fourth: The Prime Minister-designate shall present the names of his members of the Council of Ministers and the ministerial program to the Council of Representatives. He is deemed to have gained its confidence upon the approval, by an absolute majority of the Council of Representatives, of the individual Ministers and the ministerial program.

Fifth: The President of the Republic shall charge another nominee to form the Council of Ministers within fifteen days in case the Council of Ministers did not win the vote of confidence.

Article 77:

First: The conditions for assuming the post of the Prime Minister shall be the same as those for the President of the Republic, provided that he has a college degree or its equivalent and is over thirty-five years of age.

Second: The conditions for assuming the post of Minister shall be the same as those for members of the Council of Representatives, provided that he holds a college degree or its equivalent.

Article 78:

The Prime Minister is the direct executive authority responsible for the general policy of the State and the commander-in-chief of the armed forces. He directs the Council of Ministers, presides over its meetings, and has the right to dismiss the Ministers, with the consent of the Council of Representatives.

Article 79:

The Prime Minister and members of the Council of Ministers shall take the constitutional oath before the Council of Representatives according to the language stipulated in Article 50 of the Constitution.

Article 80:

The Council of Ministers shall exercise the following powers:

First: To plan and execute the general policy and general plans of the State and oversee the work of the ministries and departments not associated with a ministry.

Second: To propose bills.

Third: To issue rules, instructions, and decisions for the purpose of implementing the law.

Fourth: To prepare the draft of the general budget, the closing account, and the development plans.

Fifth: To recommend to the Council of Representatives that it approve the appointment of undersecretaries, ambassadors, state senior officials, the Chief of Staff of the Armed Forces and his deputies, division commanders or higher, the Director of the National Intelligence Service, and heads of security institutions.

Sixth: To negotiate and sign international agreements and treaties, or designate any person to do so.

Article 81:

First: The President of the Republic shall take up the office of the Prime Minister in the event the post becomes vacant for any reason whatsoever.

Second: If the event mentioned in “First” of this Article occurs, the President shall charge another nominee to form the Council of Ministers within a period not to exceed fifteen days in accordance with the provisions of Article 76 of this Constitution.

Article 82:

A law shall regulate the salaries and allowances of the Prime Minister and Ministers, and anyone of their grade.

Article 83:

The responsibility of the Prime Minister and the Ministers before the Council of Representatives is of a joint and personal nature.

Article 84:

First: A law shall regulate the work and define the duties and authorities of the security institutions and the National Intelligence Service, which shall operate in accordance with the principles of human rights and shall be subject to the oversight of the Council of Representatives.

Second: The National Intelligence Service shall be attached to the Council of Ministers.

Article 85:

The Council of Ministers shall establish internal bylaws to organize the work therein.

Article 86:

A law shall regulate the formation of ministries, their functions, and their specializations, and the authorities of the minister.

Chapter Three
The Judicial Power

Article 87:

The judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law.

Article 88:

Judges are independent, and there is no authority over them except that of the law. No power shall have the right to interfere in the judiciary and the affairs of justice.

Article 89:

The federal judicial power is comprised of the Higher Juridical Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts that are regulated in accordance with the law.

ONE: Higher Juridical Council

Article 90:

The Higher Juridical Council shall oversee the affairs of the judicial committees. The law shall specify the method of its establishment, its authorities, and the rules of its operation.

Article 91:

The Higher Juridical Council shall exercise the following authorities:

First: To manage the affairs of the judiciary and supervise the federal judiciary.

Second: To nominate the Chief Justice and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the Chief Justice of the Judiciary Oversight Commission, and to present those nominations to the Council of Representatives to approve their appointment.

Third: To propose the draft of the annual budget of the federal judicial authority, and to present it to the Council of Representatives for approval.

TWO: Federal Supreme Court

Article 92:

First: The Federal Supreme Court is an independent judicial body, financially and administratively.

Second: The Federal Supreme Court shall be made up of a number of judges, experts in Islamic jurisprudence, and legal scholars, whose number, the method of their selection, and the work of the Court shall be determined by a law enacted by a two-thirds majority of the members of the Council of Representatives.

Article 93:

The Federal Supreme Court shall have jurisdiction over the following:

First: Overseeing the constitutionality of laws and regulations in effect.

Second: Interpreting the provisions of the Constitution.

Third: Settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law shall guarantee the right of direct appeal to the Court to the Council of Ministers, those concerned individuals, and others.

Fourth: Settling disputes that arise between the federal government and the governments of the regions and governorates, municipalities, and local administrations.

Fifth: Settling disputes that arise between the governments of the regions and governments of the governorates.

Sixth: Settling accusations directed against the President, the Prime Minister and the Ministers, and this shall be regulated by law.

Seventh: Ratifying the final results of the general elections for membership in the Council of Representatives.

Eight:

A. Settling competency disputes between the federal judiciary and the judicial institutions of the regions and governorates that are not organized in a region.

B. Settling competency disputes between judicial institutions of the regions or governorates that are not organized in a region.

Article 94:

Decisions of the Federal Supreme Court are final and binding for all authorities.

Three: General Provisions

Article 95:

The establishment of special or extraordinary courts is prohibited.

Article 96:

The law shall regulate the establishment of courts, their types, levels, and jurisdiction, and the method of appointing and the terms of service of judges and public prosecutors, their discipline, and their retirement.

Article 97:

Judges may not be removed except in cases specified by law. Such law will determine the particular provisions related to them and shall regulate their disciplinary measures.

Article 98:

A judge or public prosecutor is prohibited from the following: First: Combining a judicial position with legislative and executive positions and any other employment.

Second: Joining any party or political organization or performing any political activity.

Article 99:

A law shall regulate the military judiciary and shall specify the jurisdiction of military courts, which are limited to crimes of a military nature committed by members of the armed forces and security forces, and within the limits established by law.

Article 100:

It is prohibited to stipulate in the law the immunity from appeal for any administrative action or decision.

Article 101:

A State Council may be established, specialized in functions of the administrative judiciary, issuing opinions, drafting, and representing the State and various public commissions before the courts except those exempted by law.

Chapter Four
Independent Commissions

Article 102:

The High Commission for Human Rights, the Independent Electoral Commission, and the Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law.

Article 103:

First: The Central Bank of Iraq, the Board of Supreme Audit, the Communication and Media Commission, and the Endowment Commissions are financially and administratively independent institutions, and the work of each of these institutions shall be regulated by law.

Second: The Central Bank of Iraq is responsible before the Council of Representatives. The Board of Supreme Audit and the Communication and Media Commission shall be attached to the Council of Representatives.

Third: The Endowment Commissions shall be attached to the Council of Ministers.

Article 104:

A commission named The Martyrs' Foundation shall be established and attached to the Council of Ministers, and its functions and competencies shall be regulated by law.

Article 105:

A public commission shall be established to guarantee the rights of the regions and governorates that are not organized in a region to ensure their fair participation in managing the various state federal institutions, missions, fellowships, delegations, and regional and international conferences. The commission shall be comprised of representatives of the federal government and representatives of the regions and governorates that are not organized in a region, and shall be regulated by a law.

Article 106:

A public commission shall be established by a law to audit and appropriate federal revenues. The commission shall be comprised of experts from the federal government, the regions, the governorates, and its representatives, and shall assume the following responsibilities:

First: To verify the fair distribution of grants, aid, and international loans pursuant to the entitlement of the regions and governorates that are not organized in a region.

Second: To verify the ideal use and division of the federal financial resources.

Third: To guarantee transparency and justice in appropriating funds to the governments of the regions and governorates that are not organized in a region in accordance with the established percentages.

Article 107:

A council named the Federal Public Service Council shall be established and shall regulate the affairs of the federal public service, including appointments and promotions, and its formation and competencies shall be regulated by law.

Article 108:

Other independent commissions may be established by law, according to need and necessity.

Section Four

Powers of the Federal Government

Article 109:

The federal authorities shall preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system.

Article 110:

The federal government shall have exclusive authorities in the following matters:

First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy.

Second: Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq.

Third: Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank.

Fourth: Regulating standards, weights, and measures.

Fifth: Regulating issues of citizenship, naturalization, residency, and the right to apply for political asylum.

Sixth: Regulating the policies of broadcast frequencies and mail.

Seventh: Drawing up the general and investment budget bill.

Eighth: Planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to Iraq and its just distribution inside Iraq in accordance with international laws and conventions.

Ninth: General population statistics and census.

Article 111:

Oil and gas are owned by all the people of Iraq in all the regions and governorates.

Article 112:

First: The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all

parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law.

Second: The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encouraging investment.

Article 113:

Antiquities, archeological sites, cultural buildings, manuscripts, and coins shall be considered national treasures under the jurisdiction of the federal authorities, and shall be managed in cooperation with the regions and governorates, and this shall be regulated by law.

Article 114:

The following competencies shall be shared between the federal authorities and regional authorities:

First: To manage customs, in coordination with the governments of the regions and governorates that are not organized in a region, and this shall be regulated by a law.

Second: To regulate the main sources of electric energy and its distribution.

Third: To formulate environmental policy to ensure the protection of the environment from pollution and to preserve its cleanliness, in cooperation with the regions and governorates that are not organized in a region.

Fourth: To formulate development and general planning policies.

Fifth: To formulate public health policy, in cooperation with the regions and governorates that are not organized in a region.

Sixth: To formulate the public educational and instructional policy, in consultation with the regions and governorates that are not organized in a region.

Seventh: To formulate and regulate the internal water resources policy in a way that guarantees their just distribution, and this shall be regulated by a law.

Article 115:

All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute.

Section Five

Powers of the Regions

Chapter One

Regions

Article 116:

The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations.

Article 117:

First: This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.

Second: This Constitution shall affirm new regions established in accordance with its provisions.

Article 118:

The Council of Representatives shall enact, in a period not to exceed six months from the date of its first session, a law that defines the executive procedures to form regions, by a simple majority of the members present.

Article 119:

One or more governorates shall have the right to organize into a region based on a request to be voted on in a referendum submitted in one of the following two methods:

First: A request by one-third of the council members of each governorate intending to form a region.

Second: A request by one-tenth of the voters in each of the governorates intending to form a region.

Article 120:

Each region shall adopt a constitution of its own that defines the structure of powers of the region, its authorities, and the mechanisms for exercising such authorities, provided that it does not contradict this Constitution.

Article 121:

First: The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government.

Second: In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region.

Third: Regions and governorates shall be allocated an equitable share of the national revenues sufficient to discharge their responsibilities and duties, but having regard to their resources, needs, and the percentage of their population.

Fourth: Offices for the regions and governorates shall be established in embassies and diplomatic missions, in order to follow cultural, social, and developmental affairs.

Fifth: The regional government shall be responsible for all the administrative requirements of the region, particularly the establishment and organization of the internal security forces for the region such as police, security forces, and guards of the region.

Chapter Two

Governorates that are not incorporated in a region

Article 122:

First: The governorates shall be made up of a number of districts, sub-districts, and villages.

Second: Governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration, and this shall be regulated by law.

Third: The governor, who is elected by the Governorate Council, is deemed the highest executive official in the governorate to practice his powers authorized by the Council.

Fourth: A law shall regulate the election of the Governorate Council, the governor, and their powers.

Fifth: The Governorate Council shall not be subject to the control or supervision of any ministry or any institution not linked to a ministry. The Governorate Council shall have independent finances.

Article 123:

Powers exercised by the federal government can be delegated to the governorates or vice versa, with the consent of both governments, and this shall be regulated by law.

Chapter Three

The Capital

Article 124:

First: Baghdad in its municipal borders is the capital of the Republic of Iraq and shall constitute, in its administrative borders, the governorate of Baghdad.

Second: This shall be regulated by a law.

Third: The capital may not merge with a region.

Chapter Four

The Local Administrations

Article 125:

This Constitution shall guarantee the administrative, political, cultural, and educational rights of the various nationalities, such as Turkomen, Chaldeans, Assyrians, and all other constituents, and this shall be regulated by law.

Section Six

Final and Transitional Provisions

Chapter One

Final Provisions

Article 126:

First: The President of the Republic and the Council of the Ministers collectively, or one-fifth of the Council of Representatives members, may propose to amend the Constitution.

Second: The fundamental principles mentioned in Section One and the rights and liberties mentioned in Section Two of the Constitution may not be amended except after two successive electoral terms, with the approval of two-thirds of the members of the Council of Representatives, the approval of the people in a general referendum, and the ratification by the President of the Republic within seven days.

Third: Other articles not stipulated in clause “Second” of this Article may not be amended, except with the approval of two-thirds of the members of the Council of Representatives, the approval of the people in a general referendum, and the ratification by the President of the Republic within seven days.

Fourth: Articles of the Constitution may not be amended if such amendment takes away from the powers of the regions that are not within the exclusive powers of the federal

authorities, except by the approval of the legislative authority of the concerned region and the approval of the majority of its citizens in a general referendum.

Fifth:

A. An amendment is considered ratified by the President of the Republic after the expiration of the period stipulated in clauses “Second” and “Third” of this Article, in case he does not ratify it.

B. An amendment shall enter into force on the date of its publication in the Official Gazette.

Article 127:

The President of the Republic, the Prime Minister, members of the Council of Ministers, the Speaker of the Council of Representatives, his two Deputies, members of the Council of Representatives, members of the Judicial Authority, and people of special grades may not use their influence to buy or rent any state properties, to rent or sell any of their assets to the state, to sue the state for these assets, or to conclude a contract with the state under the pretense of being building contractors, suppliers, or concessionaires.

Article 128:

The laws and judicial judgments shall be issued in the name of the people.

Article 129:

Laws shall be published in the Official Gazette and shall take effect on the date of their publication, unless stipulated otherwise.

Article 130:

Existing laws shall remain in force, unless annulled or amended in accordance with the provisions of this Constitution.

Article 131:

Every referendum mentioned in this Constitution is deemed successful with the approval of the majority of the voters unless otherwise stipulated.

Chapter Two

Transitional Provisions

Article 132:

First: The State shall guarantee care for the families of the martyrs, political prisoners, and victims of the oppressive practices of the defunct dictatorial regime.

Second: The State shall guarantee compensation to the families of the martyrs and the injured as a result of terrorist acts.

Third: A law shall regulate matters mentioned in clauses “First” and “Second” of this Article.

Article 133:

The Council of Representatives shall adopt in its first session the bylaws of the Transitional National Assembly until it adopts its own bylaws.

Article 134:

The Iraqi High Tribunal shall continue its duties as an independent judicial body, in examining the crimes of the defunct dictatorial regime and its symbols. The Council of Representatives shall have the right to dissolve it by law after the completion of its work.

Article 135:

First: The High Commission for De-Ba’athification shall continue its functions as an independent commission, in coordination with the judicial authority and the executive

institutions within the framework of the laws regulating its functions. The Commission shall be attached to the Council of Representatives.

Second: The Council of Representatives shall have the right to dissolve this Commission by an absolute majority after the completion of its function.

Third: A nominee to the positions of the President of the Republic, the Prime Minister, the members of the Council of Ministers, the Speaker, the members of the Council of Representatives, the President, members of the Federation Council, their counterparts in the regions, or members of the judicial commissions and other positions covered by de-Ba'athification statutes pursuant to the law may not be subject to the provisions of de-Ba'athification.

Fourth: The conditions stated in clause "Third" of this Article shall remain in force unless the Commission stated in item "First" of this Article is dissolved.

Fifth: Mere membership in the dissolved Ba'ath party shall not be considered a sufficient basis for referral to court, and a member shall enjoy equality before the law and protection unless covered by the provisions of De-Ba'athification and the directives issued according to it.

Sixth: The Council of Representatives shall form a parliamentary committee from among its members to monitor and review the executive procedures of the Higher Commission for De-Ba'athification and state institutions to guarantee justice, objectivity, and transparency and to examine their consistency with the laws. The committee's decisions shall be subject to the approval of the Council of Representatives.

Article 136:

First: The Property Claims Commission shall continue its functions as an independent commission in coordination with the judicial authority and the executive institutions in accordance with the law. The Property Claims Commission shall be attached to the Council of Representatives.

Second: The Council of Representatives shall have the right to dissolve the Commission by a two-thirds majority vote of its members.

Article 137:

Application of the provisions of the articles related to the Federation Council, wherever it may be cited in this Constitution, shall be postponed until the Council of Representatives issues a decision by a two-thirds majority vote in its second electoral term that is held after this Constitution comes into force.

Article 138:

First: The expression "the Presidency Council" shall replace the expression "the President of the Republic" wherever the latter is mentioned in this Constitution. The provisions related to the President of the Republic shall be reactivated one successive term after this Constitution comes into force.

Second:

A. The Council of Representatives shall elect the President of the State and two Vice Presidents who shall form a Council called the "Presidency Council," which shall be elected by one list and with a two-thirds majority.

B. The provisions to remove the President of the Republic present in this Constitution shall apply to the President and members of the Presidency Council.

C. The Council of Representatives may remove a member of the Presidency Council with a three-fourths majority of the number of its members for reasons of incompetence and dishonesty.

D. In the event of a vacant seat in the Presidency Council, the Council of Representatives shall elect a replacement by a two-thirds majority vote of its members.

Third: Members of the Presidency Council shall be subject to the same conditions as a member of the Council of Representatives and must:

A. Be over forty years of age.

B. Enjoy good reputation, integrity and uprightness.

C. Have quit the dissolved (Ba'ath) Party ten years prior to its fall, in case he was a member of it.

D. Have not participated in suppressing the 1991 and Al-Anfal uprisings. He must not have committed a crime against the Iraqi people.

Fourth: The Presidency Council shall issue its decisions unanimously and any member may delegate to one of the two other members to take his place.

Fifth:

A. Legislation and decisions enacted by the Council of Representatives shall be forwarded to the Presidency Council for their unanimous approval and for its issuance within ten days from the date of delivery to the Presidency Council, except the stipulations of Articles 118 and 119 that pertain to the formation of regions.

B. In the event the Presidency Council does not approve, legislation and decisions shall be sent back to the Council of Representatives to reexamine the disputed issues and to vote on them by the majority of its members and then shall be sent for the second time to the Presidency Council for approval.

C. In the event the Presidency Council does not approve the legislation and decisions for the second time within ten days of receipt, the legislation and decisions are sent back to the Council of Representatives, which has the right to adopt it by three-fifths majority of its members, which may not be challenged, and the legislation or decision shall be considered ratified.

Sixth: The Presidency Council shall exercise the powers of the President of the Republic stipulated in this Constitution.

Article 139:

The Prime Minister shall have two deputies in the first electoral term.

Article 140:

First: The executive authority shall undertake the necessary steps to complete the implementation of the requirements of all subparagraphs of Article 58 of the Transitional Administrative Law.

Second: The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this Constitution, provided that it accomplishes completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007.

Article 141:

Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution.

Article 142:

First: The Council of Representatives shall form at the beginning of its work a committee from its members representing the principal components of the Iraqi society with the mission of presenting to the Council of Representatives, within a period not to exceed four months, a report that contains recommendations of the necessary amendments that could be made to the Constitution, and the committee shall be dissolved after a decision is made regarding its proposals.

Second: The proposed amendments shall be presented to the Council of Representatives all at once for a vote upon them, and shall be deemed approved with the agreement of the absolute majority of the members of the Council.

Third: The articles amended by the Council of Representatives pursuant to item “Second” of this Article shall be presented to the people for voting on them in a referendum within a period not exceeding two months from the date of their approval by the Council of Representatives.

Fourth: The referendum on the amended Articles shall be successful if approved by the majority of the voters, and if not rejected by two-thirds of the voters in three or more governorates.

Fifth: Article 126 of the Constitution (concerning amending the Constitution) shall be suspended, and shall return into force after the amendments stipulated in this Article have been decided upon.

Article 143:

The Transitional Administrative Law and its Annex shall be annulled on the seating of the new government, except for the stipulations of Article 53(A) and Article 58 of the Transitional Administrative Law.

Article 144:

This Constitution shall come into force after the approval of the people thereon in a general referendum, its publication in the Official Gazette, and the seating of the government that is formed pursuant to this Constitution.

APPENDIX 2

INTERVIEW QUESTIONS

1. What are the federal system and the administrative decentralization?
2. What is your opinion about the federal system in Iraqi constitution?
3. Could you highlight the difference between federalism in Iraq and other countries which follow federalism?
4. What is your opinion when the Iraqi Constitution grant the right to exercise the powers for both the governorates and Kurdistan region?
5. In your opinion, does the Constitution of 2005 mix the concept of administrative decentralization with the concept of federalism when distributing the powers? Why does that occur? And what is the appropriate solution to address this intervention?
6. What is your opinion about the overlapping powers mentioned in following articles 115, 121/Second/Fourth /Fifth, 114 and 123 in the Constitution of 2005?
7. What is your opinion about the article 122/ Fifth As a contrary to the principles of administrative decentralization system?
8. What is your opinion when Iraqi Constitution includes the powers exercised by the governorates that are not organized in a region in spite of being administrative units that have been regulated under the ordinary law? Are the governorates that enjoyed powers proportionate with the principles of administrative decentralization?
9. Do you think that the federal system suitable for Iraq?
10. What do you suggest for the development of the federal system in Iraq?

Would you like to add more?